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ABSTRACT

Federal support for day care was first proposed in 1971; it remains an issue in 1989. Added to the battles between those who see day care as an educational program and those who view it as a logical extension of state economic assistance to low income families, and between those who favored tax credits and those who advocated direct appropriations, has been the church versus state issue. What happens when up to 40 percent of the potential vendors of a service to be subsidized by the federal government are churches or organizations housed in church buildings and when the establishment clause of the First Amendment is currently interpreted as prohibiting public support for religious institutions? The debate sparked by this question, in turn, touched upon deeper questions about how government should intervene in family matters and childhood development. One approach is to assist clients directly rather than through the day care centers. Refundable tax credits or a voucher option would allow parents to choose the facility they desire. Additionally, day care has implications for public education. The growing critique of education appears to have undermined faith in traditional governmental approaches while enhancing the salience of parental choice arguments. This document traces the development of these issues by weaving together historical material and published accounts with interviews conducted in Washington during the summer of 1989. An 11-item bibliography is included. (JB)

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THE POLITICS OF FEDERAL DAY CARE:

The Nexus of Family, Church, and the Positive State

or

WHY IS IT SO DIFFICULT TO GET LEGISLATION PASSED AND WHY WILL IT LOOK THE WAY IT DOES WHEN CONGRESS GETS THROUGH

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THE POLITICS OF FEDERAL DAY CARE:
The Nexus of Family, Church, and the Positive State

Almost two decades since its last manifestation, federal support for day care is back on the congressional agenda, but this time with new concerns to accompany time-worn issues. As the idea percolated from 1986-89 certain routine dynamics could be found. States objected to nationally mandated standards and regulations. Turf battles ensued between those who see day care as an educational program and those who view it as a logical extension of state economic assistance to low and modest income families. And conservatives, who favored tax credits exclusively, were pitted predictably against liberals, who advocated direct appropriations coupled with national health and safety standards. But the problem that caught proponents completely off guard -- and the one that has proven most contentious and crosscutting -- is a thorny church state issue. What do you do when up to 40 percent of the potential venders of a service to be subsidized by the federal government are churches or organizations housed in church buildings (and the establishment clause of the First Amendment has come to be understood as prohibiting public support for religious institutions)? To the chagrin of day care proponents, consequently, the ABC legislation thus ignited a rancorous and complex debate over the proper relation between the positive state and activist churches. This debate, in turn, touched upon deeper questions about how government should intervene in family matters and childhood development.

We are going to argue that certain distinctive features of day care foster and indeed may exemplify a groping for innovative federal initiatives that accommodate parental choice and decentralized administration. Why? Because between 1971

(when legislation first passed Congress, only to be vetoed by President Nixon) and 1989 the political and intellectual climate has changed dramatically. On the political front congressional policy-making is far more decentralized and actors more numerous, making consensus-building arduous and creative. The Gramm-Rudman era of fewer new programs and severe budgetary constraints also means greater scrutiny of fresh initiatives. Intellectually, decades of accumulated precedents in federal programming have taught sophisticated actors to be wary of unintended consequences (See Pressman and Wildavsky, 1973). Faith in bureaucratic approaches, especially, has been undermined by the perceived failure of public schooling to meet competitive international challenges, in spite of numerous federal initiatives and spending. On the practical level the absence of a prior high-profile federal role in day care fostered market forces that spurred other actors, notably churches, to move into the vacuum. Thus, by the time the issue resurfaced on the agenda, churches were major players, something few could have anticipated two decades earlier. This prior role of the churches, of course, confronted legislators with a far more delicate task than merely creating a new federal program and thus fostered a more far-ranging and philosophically-rooted debate. What is apparently emerging from this debate is a consensus for some form of "parental choice" in the execution of the program, either through tax credits or vouchers, which contrast sharply with the approaches favored in 1971. Thus, an extraordinary confluence of factors allows our analysis to serve as a crucial test[1] of the evolving policy making

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[1]Helpful here is Harry Eckstein's analysis of the unheralded value of the "lowly" case study in theory building. The well chosen case can stimulate theoretical insight (allowing it to be tested more rigorously), can probe the plausibility of a proposition, and can even serve as a critical test of a hypothesis which precludes a particular outcome. Our analysis serves the first two functions well. See Harry Eckstein, "Case Study and Theory in Political Science," in *Handbook of Political Science*, Vol.7, Chapter 3, Fred Greenstein and Nelson Polsby, editors (Reading, MA: Addison Wesley, 1975).

milieu. Comparing the politics of day care over time thus has heuristic value for our understanding of the changing American polity along with its obvious policy interest.

The research approach employed here has been to weave together historical material and published accounts with information obtained from interviews conducted in Washington in the summer of 1989, along with observation of the House committee mark-up session in June. The copious record of congressional consideration of day care in 1971 allows us to draw meaningful comparisons between the two eras.

Child Care Policy in the United States

Child care policy looms large in the current Congress, but the issue is not one unfamiliar to Capitol Hill. Public child care has existed in the United States since the late nineteenth century and has been primarily viewed by government as an economic consideration (Zigler, 1983). Until the 1960s, national policies on child care existed only in times of crisis. During the Great Depression, nursery schools were created by the Works Progress Administration to provide jobs for the unemployed. Once the nation's economy began to recover, however, the program was discontinued (Joffe, 1983). Federal support for child care was authorized by the Lanham Act during World War II so that women could fill factory jobs vacated by men. However, these programs were once again discontinued after the war ended and men returned to the work force.

More common, though, have been the creation of child care policies that further social welfare goals. Several proposals sought to facilitate the entrance of the economically disadvantaged into the work force. In 1963, the Kennedy administration successfully sought the first federal funding for child care since World War II as a part of its effort to "break the cycle of dependency"(Zigler, 1982). Before

coming to fruition, however, the program was derailed by withheld funding and an unmanageable regulatory system (Nelson, 1982).

Shortly after this attempt, child care advocates turned their attention to broader social initiatives. Many members of Congress felt that "breaking the cycle of dependency" could not be accomplished merely by forcing welfare recipients into the work force; therefore, proposals of direct-funding for custodial care of welfare children were considered simplistic and incomplete. The flagship program of these "developmentalists" was Head Start, instituted in 1965 as a facet of Lyndon Johnson's War on Poverty (Joffe, 1977). The early success of Head Start encouraged members to continue to seek a more comprehensive approach to child care -- one that developed the potential of participating children as well as babysitting them.

By 1967, the two spheres of child care -- economic and social -- were slowly merging. Both the many advocates of "employment oriented" child care and the developmentalists desired a firm national policy on child care. But although both groups sought to "break the cycle of dependency," they were at cross-purposes in method. Custodial child care focused on keeping costs at a minimum to allow adult entrance into the work force. Development-oriented approaches operated with understandably high expenses. The consolidation of these approaches in the late 1960s resulted in ambiguous compromises, and programs were established without clear goals and varying regulatory oversight. Thus, the conflict between custodial advocates and developmentalists prevented any major legislation from being enforced (Nelson, 1982).

The problems encountered during these early attempts were indicative of future obstacles. And although such tensions were predictable, no new strategy rose to face them until the late 1980s, when church state problems fostered a set of more consciously "parent-centered" policy alternatives.

New Facets to Old Arguments

While child care initiatives have appeared periodically since World War I, none have been as contentious as the Comprehensive Child Care Act (CCC) of 1971 and the Act for Better Child Care (ABC) of 1989. In both cases the original impetus for federal child care was the desire to assist poor families, and congressional support was reasonably bipartisan. Ensuing debate, however, revealed competing definitions of child care and its need, and the focus widened to include children of middle income families. This, in turn, sparked deeper philosophical divisions and controversy.

Intriguingly, administration-backed welfare reform packages were the original sparks for federal child care initiatives in both 1971 and in the late 1980s. The 1971 legislation was prompted by Nixon's 1970 White House Conference on Children, which called attention to the number of children living in poverty. Because many of these children were in single parent homes relying on welfare, the administration proposed solutions that attempted to draw welfare recipients into the work force. Federally-funded child care was then seen as a necessary precondition for allowing parents to seek work or job training. Similarly, it was Reagan's 1986 welfare reform proposal that sparked numerous day care initiatives, as it was obvious that lack of affordable day care would impede the movement of the poor into desired employment.

In both instances, however, expanded notions of national child care emerged, as congressional members advanced the educational, nutritional and health needs of children, criticizing their absence in previous proposals. This developmentalist orientation, moreover, encouraged Congressional members to broaden the coverage of child care legislation to include middle income families. Thus, in contrast to Nixon's proposal, the CCC Act stated that all children were eligible for federal child

care programs regardless of their economic backgrounds. Families at or below the poverty level would receive free care while others would participate according to a sliding fee scale. Likewise, ABC incorporates a variety of funding options, some of which are available to middle-income families.

The inclusion of middle income families, however, often provokes more controversy, especially when legislation expands the scope of federal regulation. Floor debate preceding the passage of CCC in 1971, for example, was replete with comparisons between developmental care and the Sovietizing of children, and conservatives attempted to limit the accessibility of child care programs to the poor. Although the CCC legislation passed Congress despite these objections, Nixon vetoed it. Evidence suggests an outpouring of sentiment from evangelical and right-wing constituents concerned with the intrusion of government in family life led to Nixon's successful action (Zigler and Goodman, 1982). Similarly, when Democrats coalesced in 1987 around the vision of a national day care policy, as embodied in ABC, critics focused on "bureaucratic meddling" with family life. Evidently, it is one thing for the government to assist "those poor families"; quite another if it wants to "develop" my kids or "regulate" my day care center.

A key question is why the 1971 legislation passed Congress with relative ease while the contemporary Congress has struggled unsuccessfully for three years with no resolution. The puzzle is all the more fascinating because pressure for child care is greater today than it was in 1971. Far more women are working now, and the feminist movement has successfully changed attitudes toward the place of women with young children in the labor force. Moreover, child care in the 1980s is a highly visible issue, addressed in forums ranging from talk shows to presidential election debates. The CCC legislation, in contrast, was largely the offspring of internal Washington politics. Yet if pressure for federal day care is greater now, so are the

complications. Certainly the Gramm-Rudman constraints are a part of the picture. But more important, still, is the changing view of governmental effectiveness. The enthusiasm for developmental day care in 1971, inspired by the success of Head Start, reflected a prevailing faith in national initiatives. By 1987, however, neo-liberals joined conservatives in their skepticism of the virtues of traditional administrative approaches, and an accumulated body of scholarship questioned the effectiveness of many governmental programs. As we have seen, child care legislation has the propensity to become more controversial at it steps beyond the boundaries of financially assisting poor families. This tendency is surely heightened in an era when skepticism about government is greater. Consequently, the push for a national child care policy, with national standards and other "strings" that affect middle class parents as well as the poor, evokes fear of governmental intrusion and unintended consequences.

By 1987 the collision of these two forces -- the strong desire to "do something" about child care, on the one hand, and the fear of heavy handed, bureaucratic government, on the other -- spurred extended negotiations by partisans to find a creative solution. And it was the existence of church run day care that elevated the concept of "parental choice" in policy implementation, as we see in the discussion below.

The Dilemma of ABC

What put "parental choice" at the forefront of the current debate was a factor absent from the 1971 consideration of child care legislation, namely church-based venders. In the years following Nixon's veto, the need for child care facilities greatly out-paced the supply. This condition motivated churches to establish and operate their own child care programs or allow their buildings to house them. A major

resource, religious child care became a principal consideration and complicating reality in the development of federal child care policy.

This was not anticipated by initial child care activists. Indeed, an analysis of child care in the United States published by Congressional Quarterly in 1986 failed to mention churches as providers of child care services. Rather, the dominant early concern was fiscal. The original price tag of ABC was a modest 2.5 billion dollars (cut to $1.75 billion in June 1989), considerably less in real dollars than the 1971 proposal of $2.1 billion. In spite of this, Children's Defense Fund director, Marion Wright Edelman, observed that her most "frustrating" early task was convincing Congress that the financial outlay of ABC was warranted.

It was the introduction of the House version of ABC in 1987 by Representative Dale Kildee (D-Mich.), however, that opened the Pandora's box of church-state complications. The proposal allowed the participation of church-based care but mandated its secularization. Sectarian practices were prohibited even to the point of covering religious objects and pictures. Discrimination in hiring and admissions was also forbidden; no preference could be given to members of the denomination. Predictably, both opponents of church inclusion, such as the ACLU, and opponents of the secularization, such as the U.S. Catholic Conference, lobbied aggressively.

The potency of the conflict rendered ABC fatally vulnerable, forcing sponsors to recognize the necessity of accommodation. However, efforts by Kildee and Senator Christopher Dodd (who introduced the Senate version of ABC) to produce passable legislation ignited further controversy. The provision against hiring discrimination was modified and the regulation of admissions criteria was limited to those slots which were federally funded. These measures served to alienate some groups previously supportive of the original legislation, notably the National Education Association. Moreover, with every attempt to soften the blow on religious centers,

the sponsors found themselves angering other religious groups and the civil liberties establishment. Indicative of the dilemma is the sentiment expressed by Kim Yelton, official of Americans United for the Separation of Church and State, an organization opposed to church inclusion: "There is no compromise. There never has been" (Congressional Quarterly, Feb. 27, 1988:515).

Opposition to ABC in 1988 also came in the guise of alternative proposals proffered by Republicans. Senator Orrin Hatch (R-Utah) and Representative Nancy Johnson (R-Conn) announced their legislation within days of ABC's introduction. Their package emphasized the creation of new child care facilities, arguing that ABC provided for only 700,000 slots out of the over 2 million needed. Other substitutes aimed at decreasing the pool of eligible children (re-focusing on poor families) or using the tax code to alleviate the cost burden on parents.

Ultimately, Kildee and Dodd failed to extricate ABC from Congress in 1988. The crippling blow in the Senate was attributed to the packaging of ABC with parental leave legislation, vehemently opposed by business interests. But Hatch also labeled the bill "flawed and unworkable," because the expanded eligibility diluted its impact. The demise of the House version owed more directly to the church-state dynamic, which was to resurface as a primary issue in 1989.

Renewed deliberation of ABC in 1989 was approached strategically by key players sensitive to the dilemma before them. Dodd realized only too well that ABC would suffer its 1988 fate if sponsors did not make concessions to various interests. The problem was finding a point of consensus.

For this Dodd turned to Republican conservative Orin Hatch, whose role earned him the title of "Child Care Maverick." Dedicated to producing a child care bill and claiming that his meetings with constituents in Utah convinced him of the

need, Hatch worked shoulder to shoulder with Dodd in the rejuvenation of ABC.[2] The product of months of negotiation, the Dodd-Hatch bill that emerged from the Senate labor and Human Resources Committee in March 1989 moved in the direction of conferring a "parental choice" option. The bill provided grants to states for child care venders as well as an option for parental vouchers or "certificates," which could be used by centers that met federal and state criteria.

The bill, however, did not go far enough to accommodate critics. Conservatives insisted that parental choice under any version of ABC would be compromised, and they raised the specter of "federally regulated grandmas," unnecessary closing down of centers, and harassment of home care providers. They advanced refundable tax credits as a far more effective and "gentle" approach. President Bush also notified Congressional leaders he would veto the ABC legislation as drafted. Other actors, notably Senators Dave Durenberger, Republican from Minnesota, and Wendell Ford, Democrat from Kentucky, offered an amendment, advanced by the U.S. Catholic Conference, that significantly "expanded" choice by allowing parents to use certificates for overtly sectarian child care, a measure opposed by Dodd and other liberals. Viewed as a killer amendment because it would infuriate liberal educational and civil liberties groups -- from Jewish organizations to the ACLU and the NEA -- it was seen by others as possibly the only thing that could rescue ABC from certain demise.

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[2]A Children's Defense Fund lobbyist said that Hatch's role was pivotal. For conservative critics of ABC, Hatch's philosophically inexplicable role could only be explained by ulterior motives, with speculation that his pursuit of bipartisanship was part of groundwork laid for a desired Supreme Court appointment. A top minority staff member, however, argued that Hatch was genuinely concerned about the issue and felt some national role was positive.

Remarkably, support for the Ford-Durenberger language surpassed even its backers' hopes. Thus Dodd and Senate Majority Leader George Mitchell recognized the necessity of further maneuvering and accommodation; indeed, Mitchell seized the initiative in crafting a new bill. The result of this effort was a wholly redrawn ABC, submitted to the chamber as the Mitchell Substitute in mid-June. This final proposal provided both direct subsidies and Bush's favored tax credits. It was also amended to eliminate nationally mandated standards, a provision favored by the National Governor's Association. More significantly, it incorporated the Ford-Durenberger Amendment. This move represented a far more sweeping shift than Dodd's earlier concession on parental choice, which limited parental decisions to centers that largely secularized their programs.

The debate over the Ford-Durenberger language graphically illustrates how parental choice began to emerge as a viable strategy to finesse complex church state questions. There were two lines of attack, the one constitutional, the other practical and administrative. To counter the testimony by Lawrence Tribe, Harvard Law Professor, that the Ford-Durenberger amendment was probably unconstitutional, the senators marshaled their own legal experts, including an attorney for the Congressional Research Service and a scholar at the University of Chicago Law School, who attested that the language is constitutional and consistent with other federal programs that provide similar certificates. Indeed, it was pointed out that a number of federal welfare programs employ a voucher or certificate for clients without the prohibition against sectarian venders. Moreover, the senators reasoned analogously, the GI Bill allowed recipients of federal educational support to use those grants at private, sectarian institutions; why not similar grants to parents for day care. In a document read into the Record, Christian Legal Society Attorney, Sam Ericsson, further argued that without the Ford-Durenberger language the bill violated the free

exercise of religion by not allowing qualifying parents the option of sending their kids to a sectarian day care center. As Ericsson argued, without the amendment ABC "runs afoul of the constitutional prohibition against conditioning a government benefit on the foregoing of a constitutional right." At the heart of the reasoning was the notion that a certificate program, "is a transaction between government and families...the provider is an indirect recipient of federal assistance, and receives benefits only after the family has made a private, individual choice" (Congressional Record, June 22, 1989, S7161-7169).

From a practical standpoint, Durenberger argued that church-based child care "is one of the pillars" of the day care infrastructure. Therefore, "To pass a bill out of this body which discourages or undermines up to one-third of our existing supply, and some of our best quality and low cost providers, would be ludicrous." The language of his amendment, he argued, served legitimate secular purposes, and thus was both constitutional and administratively practical (Congressional Record, June 22, 1989. The fact that Majority Leader Mitchell chose to incorporate the Ford-Durenberger language is evidence of the salience of this line of reasoning.

Floor debate over the Mitchell substitute began in late June. Discussion soon became heated as one last salvo was fired at the much amended ABC from Minority Leader Robert Dole. Objecting strenuously to the "bureaucratic" nature of ABC, Dole sought to eliminate direct subsidies and provide, instead, expanded tax credit benefits. Dole's substitute bill also included a revised version of the earned-income tax credit and a provision assisting states in increasing the availability of care.

An exasperated Dodd lashed out at Dole, accusing the minority leader of making an issue where there was none. Evident is Dodd's frustration that after two years of negotiating, and enumerable concessions, workable legislation was being undercut yet again:

> It is time to expose the Dole bill for what it is not -- and it is not a child care bill. It is time to expose the Atwater-style lies, half-truths, and gross distortions our opponents have used.... ...[Republicans] would rather talk about what used to be in the ABC bill, than admit that we have addressed every concern they have raised in 2 years of debate....

Dole, the last to speak before voting on his amendment, criticized the Democratic package for being "anti-family" and for presenting merely a facade of providing parental choice. ABC did not guarantee parents complete choice as states had the option of not using certificates. Instead, Dole contended, ABC was a bureaucratic monstrosity. "[ABC is] the Act for Bureaucratic Control. ...Senator Dodd and Senator Hatch want to make this a government issue. That is fine. They can have all the government they want. But [we] believe it is a family issue."

After voting down the Dole substitute, the Senate finally passed ABC by a voice vote on June 23, 1989. House action has been slow, and the situation there is still extremely murky. While the House Education and Labor Committee reported out the educationally-oriented Hawkins Bill in July (that explicitly forbids any sectarian participation), action will shift to the Ways and Means Committee, which will likely produce tax credit strategies. The pivotal role of "parental choice" in Senate consideration, however, cannot be disputed and may, indeed, be indicative of the likely outcome of negotiations between House, Senate, and White House.

In one sense, early proposals for day care have all paid homage to parental choice. In 1971, for example, a largely symbolic provision asserted the primacy of family autonomy. Moreover, proponents of the 1971 act countered accusations of sovietizing children by focussing attention on the accessibility and voluntary nature of the program. But what distinguishes the 1989 outcome from its earlier counterpart is the conscious attempt by many lawmakers to incorporate parental decision-making in the actual implementation. This innovation was in turn driven by a search for

resolution of thorny church-state questions. But if the outcome is "innovative" to some, it is profoundly troubling to others. Thus, because the Senate groped its way toward an embrace of the parental choice option, interest groups found themselves realigned in fascinating ways, as the following discussion shows.

The Lobby Actors: Positions and Strategies

One top Children's Defense Fund lobbyist, a veteran of 20 years on the Hill, expressed exasperation at the challenge of gaining passage for ABC: "It's the most complicated politics I have ever seen." A lobbyist for the National Education Association echoed this sentiment, "It has split the educational community, it has split the religious community, it has split the civil liberties community." To understand why this legislation proved especially knotty, it is useful to analyze three categories of partisans: 1) ABC proponents, groups focused singularly on getting directly-funded support for day care, 2) ABC opponents, groups philosophically opposed to the very concept and thus relatively uninterested in "cleaning up the bill," and 3) Church-state partisans, groups whose primary interest in the legislation was how it dealt with religious providers. This third category, of course, included groups across the spectrum, from strict separationists to accommodationists, whose fierce sparring has seriously impeded the consensus-building process.

For a while the ABC legislation appeared the product of masterful coalition-building. Led by the Children's Defense Fund, the proponents included some 130 groups, including labor unions, educational interests, mainline churches, Jewish organizations, civil rights advocates, national minority representatives, foundations, women's groups, and numerous professional associations. Philosophically these groups view a robust federal role as essential to upgrading safety and health standards, enhancing pay, training, and professionalism in the field, and increasing the availability and affordability of quality day care for low and modest income

parents. Marshalling impressive statistics on the changing work force, the lack of licensed facilities, lax day care standards, latch key kids, lost job productivity, and children in poverty unprepared for school, the coalition nudged the issue to the top of the national agenda. As one opponent noted, the advocates succeeded in framing the issue early and heightening visibility. By the time of the presidential campaign, both candidates were speaking to the issue, Dukakis endorsing the ABC approach and Bush offering a tax credit approach. The Bush initiative did deflect somewhat the move toward federal appropriations and regulation. But the position of the ABC coalition is that, while refundable tax credits for low income parents represent a welcome anti-poverty reform, such an approach has little to do with the issue of how to improve the availability and quality of child care.

Strategically, the Children's Defense Fund and its Senate allies demonstrated willingness to accommodate diverse concerns to gain passage of their legislation, even to the point of incorporating Bush's tax credit proposal. This willingness, coupled with unified Democratic support, led to passage of an ABC bill that one CDF lobbyist viewed as "excellent."

Opponents of the ABC concept include such conservative groups as the Heritage Foundation, the Free Congress Foundation, Eagle Forum, Concerned Women For America, and the Family Research Council. Arguments against the ABC approach involve routine complaints about federal bureaucracy and the preferability of market-based tax incentive approaches -- issues particularly compelling to the free marketeers at the Heritage Foundation. But the concerns that proved most cross-cutting related to family life and parental choice, and here the religious traditionalists led the charge. Indicative is the line of reasoning employed by lobbyists at the Family Research Council, the new Washington arm of James Dobson's radio ministry, Focus on the Family. To leaders of this organization the

ABC concept is "inherently flawed," because direct federal subsidies "penalize" those parents who care for their own children. "We oppose the bill because it does nothing for the low income mother who sacrifices at home," said one lobbyist. Moreover, it raises the specter of state regulation of grandmas, lawsuits against religious providers, and numerous unintended consequences of bureaucratic regulation. So deep was their philosophical objection that, even though many of their concerns were accommodated somewhat in the Senate bill, they remained opposed. "We did not want to see it cleaned up." Philosophical opponents hammered away at the irony that dual-earner middle class families would qualify for assistance while working class families with one wage earner and far less income would not. If the government wishes to assist low income persons, they ask, why does ABC provide assistance to families up to 100 percent of the state's median income?

The strategic task, according to the "traditional family" lobbyists, was to redefine the issue:

> Child care was synonymous with service offered to children whose parents work. But we have broadened it to account for what parents do too. Day Care is different from child care. Child care is what parents do, grandparents and others, as well as day care givers...If you talk about child care as a service provided for children then it's easy to justify a federal program. If, instead, you broaden that definition then you include parents, grandparents. That is a wrench thrown into the debate (lobbyist for Family Research Council).

On this score the opponents felt they succeeded, claiming that "The ABC coalition has awakened a sleeping giant" of the "majority" of parents who do not rely on secular day care centers. "Three fourths of the kids out there are still cared for by one or more parents, relatives, or in family situations. Only 25 percent are in day care centers, and of those, as much as 40 percent are church run programs. Thus certain (governmental) approaches exclude most of the care." Tax credits for parents, according to this view, represent the most non-discriminatory way to assist families

and the best mechanism of targeting assistance to the poor. And it has the virtue of providing maximum "parental choice" about what kind of care to provide with no possibility of entanglement between government and religious-based environments. Arguments like these have, in fact, been aired frequently in congressional debate, and opponents of the ABC approach can plausibly claim that they have helped to slow its progress and soften its most objectionable features. "They (ABC proponents) had to address each one of our concerns. They didn't do it to our satisfaction, but they had to accommodate. They framed the debate early, but their side is severely weakened, they will fail to achieve all of what they want."

To opponents of ABC the church state concerns were important in themselves, but were also useful in pushing philosophical points, delaying the progress, and forcing proponents to backpeddle. Like a 500 pound gorilla, church-run day care was too big to ignore. "30-40 percent of the centers are run out of churches, especially in inner cities and rural areas. It's a big problem. A government program does not lend itself to this situation." Claiming that the initial bill "aimed to drive religious centers out of business," or if not that, thoroughly secularize them, opponents could point to early language that required centers to cover up religious symbols during the day. "So significant were the problems that even mainstream liberal churches were slow to embrace the proposal." The fact that the Senate went as far as it did in accommodating these concerns, they argue, is evidence of the salience of their arguments.

The Church State Partisans

While principal proponents and opponents of the ABC approach were doing battle, a third set of actors, concerned primarily with intricate church-state implications, weighed in with their own heavy artillery. As we have seen this ingredient was totally absent in the 1971 debate, and it opened wide a fissure between

former allies -- the National Education Association and the Children's Defense Fund. The split in liberal ranks, in turn, altered the characteristics of the process, as we see below.

For leaders at the Children's Defense Fund, the church-state battle often represented a nettlesome distraction from the central issue of ensuring safe and affordable day care for kids. "We didn't anticipate the degree of religious objections to the original bill," noted one top lobbyist. And it seemed that some religious interests were being exploited to "impede progress on child care." But accommodating those concerns was essential and practical because of the church role as provider: "It's a third of all day care out there so if we excluded it we wouldn't have enough." More exasperating still was the internecine warfare between the religious groups. Sure, the churches "have differences and they're legitimate," the lobbyist conceded, but "I just wished they would have not chosen to fight out their battles with this legislation." After all, the issue would be "resolved in the courts anyway." This sentiment, not surprisingly, was criticized by some religious lobbyists, who felt that the CDF was cavalier toward their church-state concerns. But CDF staff, unencumbered by the nuances that animate many religious partisans, maintained a simple and realistic objective -- get a bill passed -- and were willing to make concessions necessary to achieve that end. While caught off guard by religious objections, strategists moved swiftly and assiduously to find a solution. Months of negotiations ensued between senators, staff, and advocates to craft compromise language, drawing upon precedents in other federal programs, such as Head Start, in which churches have participated.

For religious partisans (on all sides) the church-state issue was far too important to be left to unpredictable courts, and they worked to influence the congressional outcome. On one side were the "hard-line" ACLU and Americans United for

Separation of Church and State, which sought to exclude entirely any church participation in federal day care programs. For them there is no acceptable compromise position, and they warned that unless religious groups are "completely out of the federal funding loop"(*Congressional Quarterly Weekly Report*, 6 August 1988: 2201), they will file suit against the Act. On the other side was the U.S. Catholic Conference and such evangelical moderate groups as the Christian Legal Society, which sought a maximum accommodation of religiously-oriented centers. Allied with the Catholic Conference were numerous religious day care providers that sought some constitutional means of participating without feeling the heavy hand of the federal government. The Ford-Durenberger amendment provided the venue for this accommodation.

As any constitutional scholar can attest, church state questions are exasperating in their complexity and subtlety. One historical cleavage represents two divergent strategies -- strict separation and accommodation -- to deal with the secularizing effects of governmental initiatives. The strict separation strategy is exemplified well by the Baptist Joint Committee. To James Dunn, Executive Director of the Committee, the great irony of the child care debate is that "those who embrace public support for church run day care centers" will do more to secularize and sanitize those institutions than those who are hostile to religion. With public dollars will come rules and regulations and entanglement with the government. "It will be devastating if churches get federal support for their centers. They will really be captive of government." In this view public dollars involve seductive compromises with the church mission. Thus the best strategy to avoid this secularizing influence is to keep the churches pure and unentangled -- to explicitly forbid any government funds to sectarian programs, directly or indirectly. "I don't think they (churches) should get a penny...especially my own denomination." Is this not discrimination against religious

institutions? No, Dunn answers, "That is Religious Right rhetoric, Catholic rhetoric...I'm not discriminated against if out of my Christian mission I do something." Acknowledging that day care is the most logical extension of the welfare state, Dunn argued that the Hawkins bill in the House, which categorically forbids any funds for sectarian purposes, is much preferable to the bill passed that passed the Senate.

The accommodationist strategy, often associated with the Roman Catholic tradition but increasingly advanced by evangelical groups, has gained ground in recent years, as the perceived hostility of government toward religion seems to require something other than facile "neutrality." Frank Monaghan, director of congressional liaison for the U.S. Catholic Conference, thus said he was very pleased with the outcome in the Senate bill but views the House Hawkins bill as "totally unacceptable." To the accommodationist, churches in America perform enormously valuable public services in sheltering the homeless, resettling refugees, feeding the hungry, and caring and educating the young. To exclude them entirely, or demand that they totally secularize their programs to participate, amounts to a government-fostered secularization, increasingly reaching into every crevice not yet sanitized of religious meaning. Indeed, with the expansion of the positive state, true free exercise of religion, supposedly protected in the first amendment, is undermined if the establishment clause is used as a bludgeon against religious entities that increasingly collide with state initiatives. That argument, indeed, is the one advanced by the Christian Legal Society. The adoption of the ABC bill without the Ford-Durenberger language, CLS Director Sam Ericsson argued in a letter read into the Congressional Record, "would seriously threaten the Free Exercise of Religion rights of day care providers and parents." No one, he argued, should give up a public benefit on account of religious preference. Thus, in this view, it is government action that threatens to secularize religious institutions, and the least we can do is accommodate

the religious and moral sentiments of parents by giving them the opportunity of having their kids in religiously-oriented programs.

Each of these strategies contains intellectual integrity, and each has something to teach the other. But overshadowing the strict separation argument is the looming presence of "parental choice" as integral to the question. To take the position of no church role, while philosophically logical, does not appear practical from the viewpoint of day care providers, parents using their services, or some policymakers. Indeed, joining the National Catholic Education Association in supporting the "Parental Choice Amendment," were an unusual alliance of Jewish, Lutheran, Episcopal, Quaker, and Seventh Day Adventist associations that represent day care providers.[3] In a letter to Senator Ford these groups argued that

> "Most religiously sponsored child care, because it is provided within at least a marginally religious context, would not meet the secularization requirement.... Therefore we believe that an amendment to S.5 is needed to remove this unwarranted statutory restriction on parent's decisions about their children's care."

Accommodationists were fortified, consequently, when the debate shifted from "what government does" to decisions "parents themselves make" about care for their children. The successful amendment offered by Ford, a Kentucky Baptist, and Durenberger, a Minnesota Catholic, thus reflected the broad attraction of this powerful choice rationale.

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[3]These groups included Agudath Israel of America, American Montessori Society Christian Schools International, Evangelical Lutheran Church in America Department of Education, Friends Council on Education, Lutheran Church-Missouri Synod, National Association of Episcopal Schools, National Catholic Educational Association, National Society for Hebrew Day Schools, and Seventh-Day Adventist Board of Education. Ironically, the national offices of some denominations represented here, notably the Episcopalians and the Lutherans, actually opposed the Ford-Durenberger amendment.

But passage of this amendment sent up red flags for the National Education Association, which saw the specter of vouchers advancing ominously, at times with the acquiescence of their liberal allies. So central is their concern, indeed, that NEA will use votes on the Mitchell substitute ABC bill, which they opposed, as part of their educational ranking of members of the Senate. To NEA leaders, day care took a disastrous turn in the Senate, opening wide a schism with the Children's Defense Fund. A principal lobbyist on day care for NEA described their perspective in this manner:

> We supported the (day care) concept...We tried to get it on the national agenda, and we worked with CDF (Children's Defense Fund) for three years. NEA has been a strong supporter of quality child care, but we equate it with early education, not just custodial warehousing of children. We want an educationally focused approach, with qualified personnel and centers, with developmentally appropriate programs...But where we draw the line is that beneficiaries must not advance religion.

From this perspective early versions of the ABC bill were positive. "We had a bill we liked, the original proposal in 1987," which prohibited federal funds for sectarian purposes. But then, "It went wrong in the Senate, politics won out over substance." What happened, she argued, is that the Catholic Conference "got" to the Children's Defense Fund:

> In 1988 Marion Wright Edelman (of CDF) made a fatal mistake, she caved into the Catholic Conference. The Catholic Conference wanted religious preference in church run centers.... Edelman got panicky about the process, and felt she had to have the Catholic Conference on board. She said religious child care is fine, her father is a Baptist minister, and we need Catholics, so we had to support their amendment.

The amendment referred to here was a religious concession granted prior to the appearance of "Parental Choice" language. It revised the ABC bill's provision against discrimination in employment and admissions by providing a limited preference for

individuals with an existing relationship with the church organization. Supported by the Children's Defense Fund, it raised the ire of the ACLU and American's United, whose lobbyist claimed that Catholics "want nuns to teach in their day-care centers" (*Congressional Quarterly Weekly Report*, 6 August 1988: 2201). CDF's desire to accommodate religious concerns led to negotiations between religious partisans under Senator Dodd's direction. Dodd then introduced an amendment on 15 March, 1989, to his own bill that incorporated their consensus language. This CDF concession to the Catholic Conference was not missed by other partisans. As one conservative lobbyist put it, "CDF in effect told the NEA and the ACLU to take a hike."

To the exasperation of the NEA lobbyist, the Catholic Conference did not stop there, and supposedly "welched" on its commitment to seek no further amendments:

> Three days after markup, Monaghan said that's not enough, we want certificates...The Catholic Conference met with Bush, and the Ford-Durenberger amendment was theirs...We tried to defeat it. Kennedy and Dodd were opposed, but with the Memorial day recess they ran out of time. So Mitchell told them to cut a deal with Ford...He didn't want to see Democrats divided.

Frank Monaghan acknowledged that the Ford-Durenberger was their amendment, but said that the Conference never agreed not to advance the certificate option, and has correspondence to Senators Kennedy and Dodd substantiating that claim. What astonished Monaghan was the breadth of support for the parental choice option. "Our vote count showed at east 60 votes for the amendment, with 50 percent of the Democrats in favor...Bradley supported, and to our surprise so did Biden." Indeed, so robust was the backing, that Monaghan believes he has the votes to block any conference outcome that undermined the choice strategy.

The "Parental Choice Amendment" never came up to a vote, but was incorporated into Mitchell's substitute ABC bill, which passed over the objections of

a curious combination of conservative groups along with the ACLU, NEA, and some liberal Jewish organizations.

To the NEA the Catholic Conference looms as the heavy in all this. Noting that Catholics run a small percentage of the religious day care centers, the lobbyist ascribed other motives for the Conference's action: "They see it as a test case of vouchers," a precedent that could be expanded to education. Legislative sponsors took great pains to argue that the language did nothing of the sort, that providing certificates for clients conformed to the practice in other federal programs. But this line of reasoning is hard to sustain if, as the NEA believes, day care should be treated as a form of pre-school education. Once again, defining the issue is critical. If federal support for day care is viewed as an extension of welfare assistance, then a voucher to parents to purchase services with a licensed vender (including a church-based one) is not without precedent. If, on the other hand, it is treated as an extension of kid's education, then a "voucher" is a radical departure and a noteworthy precedent, a fact not lost on either the U.S. Catholic Conference or the National Educational Association. A powerful undercurrent in the politics of day care, consequently, is the a growing critique of what has happened with American public schools. While *New York Times* editorially longs for that "impossible dream" when "day care will become like public education" (March 26, 1988), the record of the past two decades suggests we might hesitate before we confer such an honor on our very young.

Day Care and the Critique of Public Education

One thing a number of partisans can agree on is that the day care has implications for public education and vice versa. Thus the growing critique of education appears to have undermined the faith in traditional governmental approaches while enhancing the salience of "parental choice" arguments. Day care may thus stand at hinge of an intellectual transformation.

Times have not been kind to the America's public schools. Burdened by layers of mandated activities and encumbered by family breakdown, schools are blamed for the appalling lack of basic skills and knowledge mastered by high school graduates (Ravitch and Finn, 1988). America is a "nation at risk" and its students lag behind counterparts in other industrial countries. Yet the brightest college graduates continue to forsake teaching for more lucrative or esteemed professions, and those who choose to teach often discover they enjoy little professional flexibility in choosing texts and curriculum. Moreover, the schools are a battleground of clashing values as they attempt to negotiate the shoals of religious and cultural pluralism. Parental involvement, a critical ingredient in educational success, is thus undermined when some parents feel estranged from the values they feel the schools promote. It may be inevitable that, as public entities of such centrality and visibility, schools cannot handle well the forces impinging upon them.

While educators point to lack of societal commitment and abysmal pay for teachers as the root causes of the educational crisis in the nation, other critics point to structural and moral factors that cannot be solved by money alone. One line of criticism is that public schools, in a rush to embrace "value free" education in fact taught that there are no ethical absolutes, and thus undermined the traits necessary for students to succeed -- hard work, delayed gratification, integrity, honesty, and so forth. In *The World We Created at Hamilton High 1953-1987* (1988), Gerald Grant, sociology professor at Syracuse University, traced the effect of the moral collapse on the high school environment. He concluded that the debilitating atmosphere was rooted in the abdication by the school of any claim to moral education -- to such an extent, indeed, that the drug counselor refrains from telling students what is right and wrong. The world of Hamilton High is a parent's nightmare of lost adult authority, in which teachers are asked to socialize their equals. Echoing this picture is the work of

Richard Baer at Cornell University. In a devastating critique of "values clarification," Baer recounts the story of a teacher who cannot condemn cheating, but only can state that she values honesty. The student must decide what he or she will value (Baer 1982).

This raises the related question of deficiencies in public school texts. Fears of offending certain groups, readability formulas, bureaucratic processes of text adoption, and the secular bent of text writers are credited with sanitizing curricula of challenging and historically accurate material.[4] Paul Vitz of New York University, for example, in his much heralded content analysis of public school texts, concluded that they went out of their way to exclude any recognition of the role of religion in American history and society, and that they clearly did evince a hostility toward orthodox belief. More intriguing, he found that the words marriage, wedding, wife, and husband do not appear, owing to the new age bent in the texts to embrace every conceivable alternative to traditional family arrangements (Vitz 1986). Other studies have corroborated this basic finding, including one done by the fundamentalist *bete noire*, People for the American Way.

Perhaps the most fascinating case is that of Robert Coles, child psychologist of Harvard, who was brought in as an expert witness for the schools in the famous lawsuit by Alabama parents in 1986. Coles had testified earlier in a Tennessee case that such stories as the *Wizard of Oz* were not patently harmful to children or their religious beliefs -- thus the schools in Alabama expected him to defend them against the yahoos. Yet after reading the texts he concluded that they were "crap,"

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[4]It is interesting that in an issue of *PS:Political Science and Politics* (Vol. XXI, Winter 1988) devoted to censorship in education, none of the articles mentioned the mounting evidence of secular and liberal censorship of textbooks, but instead attacked the usual suspects, Bible thumpers and right wingers.

"psychological trash," that they did indeed promote a militantly secular world view, and that he would not want his kids reading them. The Christian plaintiffs quickly adopted Coles' deposition.[5] Beyond this dramatic case are numerous examples of law suits, disputes over Christmas pageants, discrimination against student religious clubs, and even harassment of individual students.[6] In addition to lending ammunition to fundamentalists, such occurrences only further alienate the community from the public schools.

Then there is the critique of the over-bureaucratization of public education. John Chubb, senior fellow at the Brookings Institution, argues that top-heavy administration is to blame for the lack of teacher initiative and parental involvement necessary to healthy schools (Chubb 1988)[7]. Indeed, his study revealed that the more centralized the system is, the worse students do. Educators, he concludes, flourish when given the autonomy to serve their students "according to their best judgment" -- but such autonomy is achieved in public schools only under the most favorable of circumstances. Not surprisingly, Chubb concluded that strangling over regulation was not common in private schools, but was rife in the worst public schools. In New York public schools, for example, there is one administrator for every 150 students in a

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[5]Walt Harrington, "The Good Book Versus the Textbooks," *Washington Post Weekly Edition* (August 3, 1987): 8-11; Richard John Neuhaus, "Oops, Wrong Witness," *Religion and Society Report* (August 1987).

[6]In Orlando, Florida, Oliva Myers, and 8-year-old student, brought Christmas greeting cards to distribute to her classmates, but the assistant principal banned them because they contained a postage stamp size sticker with a drawing of Jesus on it (*Washington Post Weekly Edition*, February 4, 1985, page 28). In Texas a blind girl was informed in writing by a school district attorney that she would face expulsion from school if she did not desist in praying her rosary on the school bus (Congressional Record). In Alaska a principal banned teachers from saying Merry Christmas on school grounds. In Minnesota a model student and star athlete was suspended for distributing copies of a Christian magazine to fellow students.

[7]See also his book *What Price Democracy: Politics, Markets and America's Schools*.

system rocked by scandals, compared to one for every 4,000 students in the large parochial system. Moreover, so bad was the situation in Chicago, where the drop out rate was 45 percent, that parents and teachers forced the system to abolish 1,000 administrative jobs and turn statutory control over to local communities (*U.S. News and World Report*,6 February 1989). The clamor for less bureaucratic control and more parental choice in education has led to experiments as diverse as magnet schools and school choice plans, reflecting the growing appeal of market approaches (*National Journal*, "Multiple Choice," 1 July 1989: 1692).

The baggage that burdens public schools may, in fact, impede them from serving those most in need. Helpful here is Coleman and Hoffer's (1987) analysis of the advantage of Catholic parochial education for disadvantaged children. Their meticulously documented study found that kids at risk (from homes with low incomes, single parents, parents with addictions, etc.) did measurably better in parochial schools than either public schools OR private non-sectarian schools. Their explanation for this advantage is that coherent values and community support constitute a form of "social capital" that compensates somewhat for a deficient home environment. Public schools cannot do this because as agents of the state they must accommodate extreme heterogeneity in values -- to such an extent, indeed, as to be rendered almost unmanageable by principal and teachers. Private prep schools, on the other hand, were found to exaggerate individualism to such a degree that while achievement-oriented students did very well, kids from deficient backgrounds actually did worse than in the public schools. The parochial school, unlike either the prep schools or the public school, acts as a substitute "functional community" with the kind of "norms, sanctions, and rewards" capable of raising lower-class kids in a middle class manner. Different orientations to schooling thus account for the variable outcomes among those at risk. As agents of the state, public schools cannot always reinforce

community values and often may contradict them. As agents of individual families, prep schools exaggerate differences between the advantaged and disadvantaged. But as agents of religious communities, parochial schools uniquely foster the coherence and social support needed to compensate for deficient homes.

Inadequate as they may be in certain respects, preschools and day care centers, largely local, private, non-profit, and decentralized, have been immune to many of these pressures. And states that provide low income families with day care support often use a form of certificate that enables the parent to choose a religiously-oriented center as long as it is licensed. The manner in which the federal government becomes involved, consequently, will determine whether these centers go the way of public schools, with the attendant problems discussed, or in a different direction. Certainly the Senate outcome would suggest that these concerns are being heard. The call for "parental choice," may be another way of attempting to inhibit the process of parental alienation, and resulting loss of social capital, that has occurred in many public schools.

Summary

A supreme irony of the child care debate is that the ABC bill, constrained by Gramm-Rudmam, is not nearly big enough to make the impact advocates desire, or to do the damage critics allege. But just as day care was controversial in 1971, it remains so in 1989, if for somewhat different reasons.

As we have seen, many early day care proposals, and some of the recent ones, were advanced explicitly as measures to assist those on welfare to enter the workforce, and thus carry little of the philosophical gravity involved in broad social policy. When the focus shifts to working class and middle income citizens, however, then the specter of government tampering with family life becomes politically salient, and more explosive. This clearly happened in both the 1971 and 1989 cases. But it

was the church state issue, wholly absent in the 1971 debate, that forced policymakers this time to confront unintended implications of government initiatives in family matters, and to look for innovative solutions.

The politics of day care split the liberal community precisely because it exposed two potentially contradictory impulses: support for activist government and opposition to religious institutions that provide public goods. Public funding for day care thus collides with prevailing notions of strict governmental neutrality toward religion and fears of state-sponsored religious or moral indoctrination. One way to finesse this dilemma is to assist clients directly, not day care centers, and thus transfer agency and decision making to parents.

Our analysis suggests that whatever the outcome, "parental choice" has, in fact, won the intellectual debate and now must be accommodated, either by refundable tax credits or through a voucher option to parents to choose the facility they desire. Indeed, only a few Senators felt the ABC bill went too far in allowing market choices by parents to determine what kind of centers would receive support. Most of the debate centered on questions of how to incorporate choice in assistance strategies, with critics of ABC arguing that it did not go far enough. Remarkably, Senator Dodd conceded that without the "Parental Choice Amendment" he had only 20 votes for ABC. Thus the outcome in the Senate, in a way, IS genuinely threatening to the public school establishment because it reflects a new intellectual atmosphere. In the House the picture is muddied by the leadership shuffle, but there, too, arguments for "choice" are gaining ground, particularly in the Ways and Means committee, which may gut the NEA-supported Hawkins bill for tax credits. In short, we predict that an outcome that does not provide features of parental choice will not pass the contemporary Congress and survive the threat of a presidential veto. Thus we see how much the political and intellectual climate has changed since 1971, when a

Democratic Congress and a Republican President last sparred over day care. Clearly one reason for this shift is the growing critique of how public schools have evolved, a critique that looms like a shadow over the day care issue.

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